

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)	
)	
Approval of the Energy Efficiency and)	Docket No. 07-0540
Demand-Response Plan Pursuant to)	
Section12-130(f) of the Public Utilities Act.)	

BRIEF ON EXCEPTIONS OF THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois (“the People”), by and through Illinois Attorney General Lisa Madigan, hereby submit this Brief on Exceptions to the Proposed Order issued in Illinois Commerce Commission (“ICC” or “the Commission”) Docket No. 07-0540 in accordance with Section 200.830 of the ICC Rules of Practice, 83 Ill. Admin. Code § 200.830, and the schedule established by the Administrative Law Judge (“ALJ”) on November 27, 2007.

In this proceeding, the Commission reviews the proposed portfolios of energy efficiency and demand-response measures submitted by Commonwealth Edison Company (“ComEd”) and by the Illinois Department of Commerce and Economic Opportunity (“DCEO”) pursuant to Section 12-103 of the Public Utilities Act, (“PUA” or “the Act”), 220 ILCS 5/12-103. On January 28, 2008, the ALJ issued a Proposed Order. The Proposed Order conditionally approves the energy efficiency and demand response plans filed by ComEd and DCEO, subject to numerous conditions, modifications and requirements set forth in the Order.

The People take exception to only three items in the Proposed Order: (1) the analysis and conclusions scheduling Commission proceedings to determine whether ComEd meets the statutorily-mandated energy efficiency and demand response standards; (2) the analysis and conclusions relating to workshops to be conducted by ICC Staff; and (3) one aspect of the finding relating to the justness and reasonableness of ComEd's proposed tariff.

I. The Proposed Order should be modified to specify the date on which Commission review commences to assess ComEd's compliance with the energy efficiency and demand-response standards set forth in Sections 12-103(b)(1) and (c).

The Proposed Order discusses ComEd's request "to set a schedule for future determinations as to whether it is meeting the statutory energy efficiency goals." Proposed Order at 26. The Proposed Order states that ComEd has requested "Commission review of its plan, for purposes of meeting the statutory goals . . . during the second and third year of its plan." *Id.* In response to this request, the Proposed Order concludes:

The dates are as follows for commencement of Commission dockets reviewing ComEd's plan to determine whether it meets the statutory energy efficiency and demand response goals – September 1, 2010 and September 1, 2011. The Commission believes that initiating proceedings on these dates is appropriate to ensure compliance with the goals set for[th] in the Act . . .

Proposed Order at 27.

As currently drafted, the Proposed Order ensures that the Commission will commence proceedings to assess ComEd's compliance with the energy efficiency and demand-response standards that ComEd is required to meet in the years commencing

June 1, 2009 and June 1, 2010, as required by Sections 12-103(b)(2), (b)(3) and (c). Those reviews are necessary, but not sufficient.

The statute also requires ComEd to comply with energy efficiency and demand-response standards in the year commencing June 1, 2008. Section 12-103(b)(1) and (c). Although there are no penalties¹ that would apply if ComEd were to fail to meet the standards in that first year, the Commission must nonetheless determine whether ComEd meets the standards in the year commencing June 1, 2008. The Commission should commence a review to determine whether those standards are met on September 1, 2009.

Proposed Language

The People respectfully request the following modifications to the caption and “Analysis and Conclusions” section on pages 26 and 27 of the Proposed Order to specify the date on which Commission review commences to assess ComEd’s compliance with the energy efficiency and demand-response standards set forth in Sections 12-103(b)(1) and (c). This language must also be modified to ensure consistency with other conclusions in the Proposed Order (see, *e.g.*, p. 44 of the Proposed Order), to make clear that in these annual proceedings the Commission will be reviewing ComEd’s actual performance, rather than estimated values in ComEd’s plan, to determine whether the utility has complied with the statutory requirements for energy efficiency and demand response:

¹ PUA Sections 103(i) and (j) specify penalties that are to be applied if ComEd fails to meet the statutory energy efficiency and demand-response standards during the years commencing June 1, 2009 and June 1, 2010.

2. ~~Future Commission Review of ComEd's Plan to Determine Whether it ComEd Is Meeting Energy Efficiency and Demand-Response Standards. Savings Goals.~~

Analysis and Conclusions

ComEd is required to comply with the energy efficiency and demand response requirements identified in 220 ILCS 5/12-103(b) and (c), starting in the year that begins on June 1, 2008. The dates are as follows for commencement of Commission dockets reviewing ComEd's plan to determine whether it meets the statutory energy efficiency and demand response goals for the prior year: September 1, 2009 goals, September 1, 2010, and September 1, 2011. The Commission believes that initiating proceedings on these dates is appropriate to ensure compliance with the goals set forth in the Act. On or before those dates, Staff is directed to provide ~~with~~ the Commission with draft orders that will initiate docketed proceedings to review the energy efficiency and demand response goals set forth in the statute.

II. The Proposed Order should be modified to enhance the effectiveness of the Staff workshops and to harmonize the provisions relating to the mandatory Staff workshops with the provisions relating to the voluntary stakeholder process.

The Proposed Order directs ICC staff to conduct workshops "to develop standards regarding the accounting of the funds collected, the appropriate measure savings values, Net to Gross ratios, financial compliance, program information tracking and reporting and related issues." Proposed Order at 44-45. "The outcome of these workshops shall be in the form of a Staff report, setting forth Staff's recommendations regarding what rules, if any, need to be developed." Proposed Order, at 46. The Proposed Order also states that: "This Commission agrees with ComEd that it should establish a stakeholder process to review ComEd's progress towards achieving the required energy efficiency and demand response goals," and recommends that a wide range of stakeholders be "included in the collaborative," such as "the Utility, DCEO,

Staff, the Attorney General, BOMA and CUB and representation from a variety of interests, including residential consumers, business consumers, environmental and energy advocacy organizations, trades and local government.” Proposed Order, at 32.

Throughout this proceeding, the People have advocated the creation of a collaborative process to address the many issues that must be resolved to ensure successful implementation of energy efficiency and demand response measures which meet the new statutory standards. AG Ex. 1.0, at 6. The People provided expert testimony showing that this type of process has worked well in other states and is most effective when the stakeholder process is independent (*i.e.*, not controlled by the utilities) and facilitated by a neutral party. AG Ex. 1.0, at 7-8. The People have also noted, and ask the Commission to take administrative notice of, the fact that there is federal funding and technical support available from the U.S. Department of Energy (“DOE”) to support such a process.² People’s Post-trial Brief, at 11.

The Staff workshops mandated by the Proposed Order have the potential to become the comprehensive, independent stakeholder process that is needed to ensure successful implementation of the energy efficiency and demand-response measures required to achieve the new statutory standards. This will be a time-intensive process for utilities, stakeholders and, of course, for Staff. The best case scenario is one where Staff, with U.S. DOE funding and technical support, conducts comprehensive workshops involving all relevant stakeholders on the issues identified in the Proposed

² See, for example, <http://www.nrel.gov/docs/fy07osti/40780.pdf> and http://www.eere.energy.gov/wip/technical_assistance.html.

Order, and where the guidelines and rules developed in those workshops are used by the Commission to conduct rigorous annual reviews (starting in 2009) of ComEd's progress towards achieving the required energy efficiency and demand response standards. The worst case scenario is one where utilities, stakeholders and Commission Staff must try to participate effectively in separate collaboratives for each utility, multiple Staff workshops on a variety of issues, and up to six separate Commission proceedings each year to evaluate the cost-effectiveness of each utility's efficiency and demand-response programs, compliance with the statutory standards, and the prudence of costs incurred to implement efficiency and demand-response programs.

Proposed Language

To avoid duplication of effort and to conserve scarce utility, stakeholder, and Commission resources, the People respectfully request that the Proposed Order be modified on pages 45 and 46 as follows:

Analysis and Conclusions

It appears likely to be useful to the Commission Staff, the utilities, and the general public, to develop standards regarding the accounting of the funds collected, the appropriate measure savings values, Net to Gross ratios, financial compliance, program information tracking and reporting, and related issues. We note that the statutory requisites regarding energy efficiency and demand response are new to Illinois and involve many complex issues. Additionally, new technology will emerge regarding energy efficiency and demand response, requiring a flexible approach regarding technology. Staff is directed to conduct workshops on these issues and any related issues. The outcome of these workshops shall be in the form of a Staff report, setting forth Staff's recommendations regarding what rules, if any, need to be developed.

Staff is directed to coordinate the schedule and subject matter of these workshops with Commission proceedings to review the utilities' compliance with the statutory standards, the cost-effectiveness of efficiency and demand-response programs, and the prudence of the

utilities' expenditures on these programs. Staff is also directed to coordinate with the utilities and other stakeholders to minimize duplication of effort with any collaborative processes in which stakeholders may otherwise think it necessary or useful to participate. Staff should encourage participation in the workshops by the utilities, DCEO Staff, the Attorney General, BOMA, CUB and representation from a variety of interests, including residential consumers, business consumers, environmental and energy advocacy organizations, trades and local government. To maximize the resources available for these workshops, Staff is directed to explore the availability of sources of governmental funding and technical support that have been used by other States for similar processes.

III. The Proposed Order should be modified to make clear that all amounts recovered under Rider EDA are subject to prudence review.

The Proposed Order expressly recognizes that “[t]he statute . . . calls for the Commission to conduct an annual prudence ‘review to reconcile any amounts collected with the actual costs and to determine the required adjustment to the annual tariff factor to match annual expenditures.’” Proposed Order, at 5, citing 220 ILCS 5/12-103(e)). However, this critical statutory requirement is not referenced in the Findings at the end of the Proposed Order. As a matter of completeness, and to reinforce the importance of this statutory requirement as it pertains to ComEd’s proposed cost recovery mechanism, the People respectfully request that the word “prudently” be added to the final finding in the Proposed Order:

Proposed Language

The People respectfully request the following modification to the Proposed Order at page 56:

- (6) subject to the conditions, modifications, and requirements stated herein, the testimony and exhibits admitted into the record further provide evidence that Commonwealth Edison Company’s proposed mechanism

for recovering the costs prudently incurred in association with the energy efficiency and demand response measures by those two entities, Rider EDA – Energy Efficiency and Demand Response Adjustment, is just and reasonable.

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that the Commission revise the Proposed Order as set forth herein.

Respectfully Submitted,

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By: _____/s/_____

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February 1, 2008

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NOTICE OF FILING

TO: Attached Service List

Please take note that on February 1, 2008, I submitted the attached *Brief on Exceptions of the People of the State of Illinois*, on behalf of the People of the State of Illinois for filing in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 East Capitol Avenue, Springfield, Illinois, 62701.

	_____/s/_____ _____	
Dated: February 1, 2008	Kristin Munsch	
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CERTIFICATE OF SERVICE

I, Kristin Munsch, hereby certify that the foregoing document, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on February 1, 2008. Paper copies will be provided upon request.

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